HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1070 of 2003 S/S

Shakuntla W/o Shyam Lal
Vs
Nagar Palika Parishad
Kashipur

Approved for reporting.

Not approved for reporting

Date of decision 10.03.2006

Initial of Judge

Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1070 OF 2003 (S/S)

1. Shankuntla, W/o Shyam Lal,
2. Jaldhara, W/o late Suresh,
3. Surendar, S/o Sri Prakash,
4. Mohan, S/o Sri Shiv Lal,
5. Suresh, S/o Sri Dinesh,

All R/o Mohalla Maheshpur, Kashipur, District Udham Singh Nagar. .....Petitioners

Versus

1. Nagar Palika Parishad, Kashipur, District Udham Singh Nagar, through its Executive Officer.
2. Nideshak Shahri Avam Avas Nideshak, Uttaranchal Nideshayalay, Dehradun.
3. Secretary, Shahri Avam Avas Vibhag, Uttaranchal Shashan, Dehradun. .....Respondents

Shri Prabhakar Joshi, Advocate for the petitioners.
Shri Pradeep Lohani, learned counsel for the respondent no. 1.
Learned Standing Counsel for the respondents no. 2 and 3.

Dated: 10.3.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioners have prayed for a writ of mandamus commanding the respondents to regularize the services of the petitioners as Class Iv Safai Karmachari.

2. All the petitioners were working as sweepers on daily wages. Some of the petitioners were engaged in the year 1989-

90 and some in the year, 1997, by Nagar Palika on Class IV post on daily wage.

3. The petitioners have submitted that they all have completed more than 240 days of continuous service in a calendar year, therefore, they have become entitled for being regularized.

4. Petitioners have relied upon the Government Order dated 26.06.1992 for regularization of Safai Karmachari in Nagarpalika Parishad, whereby it has been directed that the daily wage workers should first be absorbed in the employment of Nagarpalika. Relevant paragraph (1) of the said G.O. is quoted below:-

"(1) स्थानीय निकायों में यदि शासन की अनुमति से सृजित नये छह पद उपलब्ध होने के कारण किसी कर्मचारी की सेवानिवृत्ति के कारण या किसी कर्मचारी की मृत्यु के कारण नियमित पदों की रिक्तियों होती हैं तो उस पर सबसे पहले उस स्थानीय निकाय में कार्यरत ऐसे दैनिक वेतन भोगी कर्मचारियों को वरीयता के आधार पर आरक्षण के नियमों का पालन करते हुए, नियुक्तियां की जायेगी जो दैनिक वेतन भोगी कर्मचारी 11–10–89 को कार्यरत थे, किन्तु उन्होने उस दिन तीन वर्ष की लगातार सेवा और प्रत्येक वर्ष में 240 दिन में कार्य की शर्त पूरी नहीं की थी और सबसे लगातार स्थानीय निकायों में दैनिक वेतन भोगी कर्मचारी के रूप में कार्यरत है ।"

5. The respondent no. 1 has sent recommendations to the respondent no.2 on different dates for regularizing the services of the petitioners.

6. On the recommendation of the respondent no. 1, the respondent no. 2 directed the District Magistrate Udham Singh Nagar to take further action for regularizing the petitioners in the light of the G.O. dated 26th June, 1992.

7. The petitioner has referred the judgment passed on 12th July, 2005 in ***Writ Petition N. 6449 of 2001 (S/S),***

Madan Lal and others Vs. State of U.P.of Uttar Pradesh. Relevant observations are quoted below:-

> *"However, this court feels that the regularization can only be directed, subject to the condition that the posts are sanctioned by the government. Learned Standing Counsel for the Nagar Palika submits that by Government Order dated 25.09.2004, the Government of Uttaranchal, has lifted the ban on recruitment of sweepers. Learned Counsel further brought to the notice of the Court that there are some twenty vacant posts, which are required to be filled and Nagar Palika is ready to accommodate those petitioners, who are entitled to same according to their seniority, in terms of the Government Order. In view of said statement, as to the regularization of the petitioners, it is directed that their cases for regularization may be considered expeditiously according to the seniority of the daily wage workers (provided they are still working on daily wages), subject to availability of the vacant post.:*

8. In the case of ***D.S. Nakara and others Vs Union of India reported in AIR 1983 Supreme Court 130*** the concept of social justice has been laid down by the Apex Court. Relevant observations of which are quoted below:

> *"65. That is the end of the journey. With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria; 'being in service and retiring*

subsequent to the specified date' for being eligible for the liberalized pension scheme and thereby dividing a homogenous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of being in service on the specified date and retiring subsequent to that date in impugned memoranda, Exhibits P-1 and P-2 violates Article 14 and is unconstitutional and is struck down."

9. The Hon'ble Apex Court in the case of Kapil Hingorani has also emphasized for improving the methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, wherein paragraph 50 of the judgment, the term "life" has been defined relying upon the judgment of Field, J. in Munn V. Illinois reported in 1877 (94) US 1131, as under:

"*Paragraph – 50: The term 'life' used in Article 21 of the Constitution of India has a wide and far reaching concept. It includes livelihood and so many other facets thereof. 'Life', as observed by Field J. in Munn V. Illinois [1877(94)US 1131] means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and facilities by which life is enjoyed. [See Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and others [1983(1) SCC 124] and Olga Tellis and others Vs Bombay Municipal Corporation and others [1985(3) SCC 545].*"

10 In view of the observations made above, respondents are directed to consider the regularization of the petitioners within a period of four months according to seniority of the daily wage workers, if they are at present working on daily wage basis, subject to the availability of the post.

11. Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

10.03.2006
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